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PEOPLE'S REPUBLIC OF CHINA

August 9, 1991

REPLY TO

Grand Rapids

TELECOPY

Beth A. Henning
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US EPA RECORDS CENTER REGION 5



468974

Re: U.S. EPA v. Stevick, et al.
(Albion-Sheridan Township Landfill, Calhoun County,
Michigan)

Dear Ms. Henning:

This firm represents the City of Albion as one of the identified potentially responsible parties ("PRPs") under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") for the Albion-Sheridan Township Landfill "Superfund" site (the "Site") in Calhoun County, Michigan. This letter is in further response to the U.S. EPA's Special Notice dated June 3, 1991, and to the Agency's request in that Notice for the submission of a "good faith" proposal for implementing and conducting the remedial investigation and feasibility study ("RI/FS") of the Site. For the reasons set forth below and in prior communications, the City of Albion is not at this time in a position to submit, either by itself or in conjunction with other identified PRPs, an offer to conduct the RI/FS.

Initially, and primarily, there does not appear to be any basis under CERCLA for the U.S. EPA's overly broad and vague

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allegations that the City of Albion is somehow a PRP with respect to the Site. The City of Albion denies that it is a current or former owner or operator of the Site located in Sheridan Township, and denies that it is a person who generated hazardous substances disposed of at the Site so as to be potentially liable under Section 107 of CERCLA. The recently received response to our Freedom of Information Act ("FOIA") request for information relative to such allegations does not adequately support a valid CERCLA § 107 cause of action against the City nor provide any basis to conclude that such an action would be well-grounded in fact and warranted under existing law. We request that the U.S. EPA immediately provide any additional information or clarification of the alleged basis for the characterization of the City of Albion as a PRP for this Site which you believe should be considered in assessing the City's participation in the RI/FS.

Furthermore, based on currently available information regarding the history of the Site, the number of PRPs identified and pursued to date by the U.S. EPA is unduly limited. The City of Albion objects to the U.S. EPA's failure to join other "necessary" PRPs, including other area municipalities apparently directly involved with the Site and other local businesses and entities from which industrial wastes allegedly disposed of at the Site are likely to have originated. This failure to include all appropriate PRPs has had a significant negative impact on the efforts of those who have been included thus far in the inordinately small group of PRPs to reach any consensus on a joint "good faith" proposal in these proceedings (although we have engaged in settlement discussions with certain of the other PRPs as referred to in your August 7, 1991 letter). This situation is compounded further by the bankruptcy of Eagle-Picher Industries (f/k/a Union Steel Products) and the resulting non-participation by that PRP in these proceedings. Under these circumstances, the Agency might be well-advised to consider a mixed-funding or mixed work approach for this Site.

We are also concerned that the State of Michigan does not appear to be sufficiently involved in this matter, despite the expressed interest of the Michigan Department of Natural Resources (DNR) in the Site, such that a complete settlement may not now be possible. Please advise us if the MDNR will be participating in the Site response activities, and, if so, on what basis.

In any case, and without regard to the City's alleged responsibility to participate in conducting the RI/FS, the City of Albion is operating under severe financial constraints and cannot in fact make an offer in "good faith" as provided by the U.S. EPA's June 3, 1991 Special Notice. Essentially, the financial resources are simply not available to the City to actually perform the RI/FS

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activities, even if the City was inclined to do so, and it would therefore be disingenuous to propose to do so. We would, however, entertain and be willing to discuss further with the U.S. EPA the possibilities for a de minimis PRP settlement under CERCLA § 122(g).

Although the City of Albion is not currently in a position to submit a "good faith" offer, it remains willing to negotiate a settlement in this matter, both with other PRPs and with the U.S. EPA, if there is some approach to resolve the concerns expressed above and allow the City to participate in a settlement on a reasonable basis. This letter is part of our continuing settlement communications to resolve this disputed claim and is therefore inadmissible under the applicable Federal and Michigan rules of evidence. Further, nothing in this letter is intended to be, nor should it be construed to be, an admission of any liability, responsibility, facts or law by the City, and the City reserves all rights, claims and defenses in this matter as to the U.S. EPA, the State of Michigan, other PRPs and third-parties.

Please keep us fully and timely advised of any developments regarding these proceedings. As we have previously indicated, all further communications in this matter to the City of Albion should be directed to my attention or to the attention of Charles Denton of this office as legal counsel for the City.

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT


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